

Introduced by Senator Ducheny

February 12, 2010

An act to amend Section 5097.5 of, and to add Chapter 1.71 (commencing with Section 5097.7) to Division 5 of, the Public Resources Code, relating to archaeological resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, as introduced, Ducheny. Archaeological resources: civil penalties.

Existing law prohibits a person from knowingly and willfully excavating upon, or removing, destroying, injuring, or defacing, any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological, or historical feature, situated on public lands, as defined. A violation of this prohibition is a misdemeanor.

This bill would enact the California Public Lands Archaeological Resources Protection Act, and would allow a state agency to issue an order that assesses a civil penalty against a person who knowingly and willfully excavates upon, or removes, destroys, injures, or defaces archaeological resources on public lands. The bill would establish procedures for the assessment of the civil penalty, including procedures for determining the commercial and archaeological value of those resources and cost of restoration. The bill would also authorize the forfeiture of the archaeological resources that were the subject of the violation and the vehicles and equipment of the person that were used in connection with the violation. The bill would allow a state agency to expend the civil penalties collected pursuant to the act, upon appropriation by the Legislature, as reimbursement for the costs of

implementing the act, including restoring and repairing the archaeological resources that are the subject of the violation, except the bill would require the state to remit to a city, county, or district the civil penalty imposed by the state, except as specified, and the items seized by the state, if the violation occurred on, or in connection with, public lands owned by, or under the jurisdiction of, that city, county, or district.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5097.5 of the Public Resources Code is
2 amended to read:

3 5097.5. (a) ~~No~~A person shall *not* knowingly and willfully
4 excavate upon, or remove, destroy, injure, or deface, any historic
5 or prehistoric ruins, burial grounds, archaeological or vertebrate
6 paleontological site, including fossilized footprints, inscriptions
7 made by human agency, rock art, or any other archaeological,
8 paleontological or historical feature, situated on public lands,
9 except with the express permission of the public agency having
10 jurisdiction over the lands. ~~Violation of this section is a~~
11 ~~misdemeanor.~~

12 (b) As used in this section, “public lands” means lands owned
13 by, or under the jurisdiction of, the state, or any city, county,
14 district, authority, or public corporation, or any agency thereof.

15 (c) (1) *A violation of this section is a misdemeanor.*

16 (2) *In addition to the penalty specified in paragraph (1), a civil*
17 *penalty may be imposed upon a person who violates this section*
18 *with respect to an archaeological resource, pursuant to Chapter*
19 *1.71(commencing with Section 5097.7).*

20 SEC. 2. Chapter 1.71 (commencing with Section 5097.7) is
21 added to Division 5 of the Public Resources Code, to read:

22

23 CHAPTER 1.71. CALIFORNIA PUBLIC LANDS ARCHAEOLOGICAL
24 RESOURCES PROTECTION ACT
25

26 5097.7. (a) The Legislature hereby finds and declares all of
27 the following:

28 (1) Archaeological resources on public lands are an accessible
29 and irreplaceable part of California’s heritage.

1 (2) These resources are increasingly endangered because of
2 their commercial attractiveness.

3 (3) Existing state laws do not provide adequate protection to
4 prevent the loss and destruction of these archaeological resources
5 and sites resulting from uncontrolled excavations and pillage.

6 (4) There is a wealth of archaeological information that has
7 been legally obtained by private individuals for noncommercial
8 purposes and which could voluntarily be made available to
9 professional archaeologists and institutions.

10 (b) The purpose of this chapter is to secure, for the present and
11 future benefit of the people of California, the protection of
12 archaeological resources and sites that are on public lands, and to
13 foster increased cooperation and exchange of information between
14 state authorities, the professional archaeological community, and
15 private individuals having collections of archaeological resources
16 and data that were obtained before January 1, 2011.

17 (c) This chapter shall be known and may be cited as “The
18 California Public Lands Archaeological Resources Protection Act.”

19 5097.7.1. For purposes of this chapter the following definitions
20 shall apply:

21 (a) (1) “Archaeological resource” means material remains of
22 past human life or activities that are of archaeological interest,
23 pursuant to the criteria and methods developed by the State
24 Historical Resources Commission pursuant to Section 5020.5.

25 (2) “Archaeological resources” include, but are not limited to,
26 pottery, basketry, beads, bottles, weapons, weapon projectiles,
27 tools, structures or portions of structures, pit houses, rock paintings,
28 rock carvings, intaglios, graves, human skeletal materials, animal
29 bones, and other human subsistence remains, or any portion or
30 piece of any of these items.

31 (3) “Archaeological resources” do not include nonfossilized or
32 fossilized paleontological specimens, or any portion or piece
33 thereof, unless these specimens were found in an archaeological
34 context.

35 (4) “Archaeological resources” do not include an item that is
36 less than 50 years of age.

37 (b) “Person” means an individual, corporation, partnership,
38 trust, institution, association, or any other private entity or a officer,
39 employee, agent, department, or instrumentality of the United

1 States, of a Native American tribe, or of any state or political
2 subdivision of a state.

3 (c) “Public lands” has the same meaning as defined in
4 subdivision (b) of Section 5097.5.

5 (d) “Public lands manager” means, with respect to public lands
6 owned by, or under the jurisdiction of, the state, the staff of a
7 department, or the head of any other agency or instrumentality of
8 the state, that has primary management authority over those public
9 lands. In the case of public lands with respect to which no
10 department, agency, or instrumentality of the state has primary
11 management authority, public lands manager means the Secretary
12 of the Natural Resources Agency.

13 (e) “State agency” includes both of the following:

14 (1) A department of the state, a conservancy, or other
15 instrumentality of the state that has primary management authority
16 over public lands, including public lands managed by the state
17 under an agreement with another public entity.

18 (2) A public lands manager.

19 5097.7.2. (a) (1) A state agency may issue an order that
20 assesses a civil penalty pursuant to this chapter against a person
21 who violates Section 5097.5 by knowingly and willfully excavating
22 upon, or removing, destroying, injuring, or defacing, an
23 archaeological resource situated on public lands.

24 (2) A state agency shall not assess a penalty unless the person
25 is given notice and opportunity for a hearing with respect to that
26 violation in accordance with Chapter 4.5 (commencing with
27 Section 11400) of Part 1 of Division 3 of Title 2 of the Government
28 Code.

29 (3) A state agency may remit or mitigate the penalty imposed
30 pursuant to this section.

31 (4) A state agency shall determine the amount of the civil
32 penalty based on both of the following:

33 (A) The archaeological or commercial value of the
34 archaeological resource involved, as determined pursuant to
35 subdivision (a) of Section 5097.7.4.

36 (B) The cost of restoration and repair of the archaeological
37 resource and the archaeological site involved, as determined
38 pursuant to subdivision (b) of Section 5097.7.4.

39 (5) The state agency may, in the case of a second or subsequent
40 violation by a person, double the amount of the civil penalty that

1 would have been assessed if that violation were the first violation
2 by that person.

3 (6) The amount of a penalty assessed under this section for a
4 violation shall not exceed the amount equal to double the cost of
5 restoration and repair of resources and archaeological sites
6 damaged and double the fair market value of resources destroyed
7 or not recovered.

8 (7) Each violation shall be a separate offense.

9 (b) (1) A person aggrieved by an order assessing a civil penalty
10 pursuant to subdivision (a) may seek judicial review by filing a
11 petition for a writ of mandate in accordance with Section 11523
12 of the Government Code. The petition shall be filed within the
13 30-day period beginning on the date the order making the
14 assessment was issued. The court shall hear that action on the
15 record made before the state agency and shall sustain the order if
16 it is supported by substantial evidence on the record considered
17 as a whole.

18 (2) If a person fails to pay an assessment of a civil penalty after
19 the order making the assessment has become a final order and the
20 person has not filed a petition for judicial review of the order in
21 accordance with paragraph (1), or after a court in an action brought
22 under paragraph (1) has entered a final judgment upholding the
23 assessment of a civil penalty, the state agency may request the
24 Office of the Attorney General to institute a civil action in the
25 court for any district in which the person is found, resides, or
26 transacts business to collect the penalty, and the court shall have
27 jurisdiction to hear and decide the action. In an action brought
28 pursuant to this paragraph, the validity and amount of the penalty
29 shall not be subject to review.

30 (c) (1) The state agency may issue subpoenas for the attendance
31 and testimony of witnesses and the production of relevant papers,
32 books, and documents, and administer oaths. A witness summoned
33 shall be paid the same fees and mileage that are paid to a witness
34 in the courts of the state.

35 (2) In case of contumacy or refusal to obey a subpoena served
36 upon any person pursuant to this subdivision, the court for any
37 district in which the person is found or resides or transacts business,
38 upon application by the state agency and after notice to that person,
39 shall have jurisdiction to issue an order requiring that person to
40 appear and give testimony before the state agency or to appear and

1 produce documents before the state agency, or both, and a failure
2 to obey that order of the court may be punished by the court as a
3 contempt of court.

4 5097.7.3. (a) All items specified in subdivision (b) are subject
5 to forfeiture and seizure by the state, in any of the following
6 circumstances:

7 (1) The person's conviction of a violation under Section 5097.5.

8 (2) An assessment of a civil penalty against a person pursuant
9 to Section 5097.7.2 for a violation of Section 5097.5.

10 (3) A determination by a court that those archaeological
11 resources, vehicles, or equipment were involved in a violation of
12 Section 5097.5.

13 (b) The items subject to forfeiture shall include the
14 archaeological resources with respect to which a violation of
15 Section 5097.5 occurred and that are in the possession of the
16 person, and all vehicles and equipment of the person that were
17 used in connection with the violation.

18 (c) If an item subject to forfeiture is obtained with respect to a
19 violation of Section 5097.5 on, or in connection with, public land
20 that is owned by or under the jurisdiction of a city, county, or
21 district, the item shall be remitted to that city, county, or district.

22 5097.7.4. For purposes of issuing an order imposing a civil
23 penalty pursuant to Section 5097.7.2, a state agency shall determine
24 the commercial and archaeological value, and cost of restoration
25 pursuant to this section.

26 (a) The commercial and archaeological value shall be determined
27 in the following manner:

28 (1) (A) The commercial value of any archaeological resource
29 involved in a violation shall be its fair market value. If the violation
30 has resulted in damage to the archaeological resource, the state
31 agency shall determine the fair market value using the condition
32 of the archaeological resource prior to the violation to the extent
33 that its prior condition can be ascertained.

34 (B) For purposes of this paragraph, "fair market value" means
35 the price that a seller is willing to accept and a buyer is willing to
36 pay on the open market.

37 (2) (A) The archaeological value of any archaeological resource
38 involved in a violation shall be the value of the information
39 associated with the archaeological resource. The state agency shall
40 appraise this value in terms of the costs of the retrieval of the

1 scientific information that would have been obtainable prior to the
2 violation.

3 (B) The costs specified in subparagraph (A) may include, but
4 are not limited to, the cost of preparing a research design,
5 conducting background research, conducting field work, carrying
6 out laboratory analyses, and preparing reports that would be
7 necessary to realize the information potential of the resource.

8 (3) The state agency shall follow the professional standards for
9 determining commercial and archaeological value, in accordance
10 with those procedures established in the Archaeological Resources
11 Protection Act (ARPA) Uniform Regulations.

12 (b) A state agency shall determine the cost of restoration and
13 repair of archaeological resources damaged as a result of a violation
14 of Section 5097.5 as the costs already incurred for emergency
15 restoration or repair work, plus those costs projected by the state
16 agency necessary to complete restoration and repair, which may
17 include, but are not limited to, the costs of any one or more of the
18 following:

19 (1) Reconstruction of the archaeological resource.

20 (2) Stabilization of the archaeological resource.

21 (3) Ground contour reconstruction and surface stabilization.

22 (4) Research necessary to carry out reconstruction or
23 stabilization.

24 (5) Physical barriers or other protective devices necessitated by
25 the disturbance of the archaeological resource to protect it from
26 further disturbance.

27 (6) Examination and analysis of the archaeological resource,
28 including recording remaining archaeological information where
29 necessitated by disturbance in order to salvage remaining values
30 that cannot be otherwise conserved.

31 (7) Reinterment of human remains in accordance with religious
32 customs and state, local, or tribal law, where appropriate.

33 (8) Preparation of reports related to any of the activities specified
34 in paragraphs (1) to (7), inclusive.

35 (c) If the violation of Section 5097.5 involves damage to in situ
36 archaeological resources, the state agency shall determine both
37 the archaeological value pursuant to subdivision (a) and the cost
38 of restoration and repair pursuant to subdivision (b).

39 5097.7.5. (a) Except as provided in subdivision (b), a state
40 agency may expend the civil penalties collected pursuant to this

1 chapter, upon appropriation by the Legislature, as reimbursement
2 for the costs of implementing this chapter, including restoring and
3 repairing the archaeological resources that are the subject of the
4 violation.

5 (b) If a violation of Section 5097.5 occurred on, or in connection
6 with, public land owned by, or under the jurisdiction of, a city,
7 county, or district, the state shall remit the civil penalty to the city,
8 county, or district, but may retain the amount of costs relating to
9 the filing and prosecution of the civil penalty.